

**IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA**

**2010 MTWCC 24**

**WCC No. 2008-2114**

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**HAROLD CALDWELL**

**Petitioner**

**vs.**

**MACo WORKERS' COMPENSATION TRUST**

**Respondent/Insurer.**

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**ORDER HOLDING § 39-71-710, MCA, UNCONSTITUTIONAL  
AS IT RELATES TO REHABILITATION BENEFITS**

**Summary:** Pursuant to § 39-71-710, MCA, the insurer's liability for payment of permanent partial disability benefits, permanent total disability benefits, and rehabilitation benefits terminates when a claimant is considered retired. Petitioner argues that, as it relates to vocational rehabilitation benefits, § 39-71-710, MCA (2005), violates his right to equal protection as guaranteed by Article II, Section 4, of the Montana Constitution.

**Held:** Section 39-71-105(3), MCA, sets forth the public policy for rehabilitation benefits. It provides that an objective of the workers' compensation system is to return a worker to work as soon as possible after the worker has suffered a work-related injury or disease. Before an injured worker can qualify for rehabilitation benefits, § 39-71-1006, MCA, requires that a rehabilitation provider certify that the worker has reasonable vocational goals and reasonable reemployment opportunity. The rehabilitation plan must take into consideration a worker's age, education, training, work history, residual physical capacities, and vocational interests. Since the statute already considers the worker's age, the Court sees no rational basis for automatically terminating rehabilitation benefits upon an injured worker's eligibility for retirement. Therefore, the Court concludes that as it relates to rehabilitation benefits, § 39-71-710, MCA, violates Petitioner's right to equal protection.

¶ 1 Pursuant to § 39-71-710, MCA, the insurer's liability for payment of permanent partial disability (PPD) benefits, permanent total disability (PTD) benefits, and

rehabilitation benefits terminates when a claimant is considered retired. The claimant is considered retired when he or she receives social security retirement benefits or retirement benefits from a system that is an alternative to social security retirement.<sup>1</sup> Petitioner Harold Caldwell (Caldwell) argues that as it relates to rehabilitation benefits, § 39-71-710, MCA (2005), violates his right to equal protection as guaranteed by Article II, Section 4, of the Montana Constitution.

### **BACKGROUND**

¶ 2 In *Reesor v. Montana State Fund*,<sup>2</sup> the Montana Supreme Court held that § 39-71-710, MCA, violated the Equal Protection Clause of the Montana Constitution as it related to PPD benefits.<sup>3</sup> In *Satterlee v. Lumberman's Mutual Casualty Company*,<sup>4</sup> the Montana Supreme Court upheld this Court's determination<sup>5</sup> that § 39-71-710, MCA, was not unconstitutional as it related to PTD benefits.

¶ 3 This matter was placed in abeyance pending the resolution of *Satterlee v. Lumberman's Mutual Casualty Company*.<sup>6</sup> After the Supreme Court issued *Satterlee*, this Court held a conference call with the parties. In light of the *Satterlee* decision, I invited counsel for both parties to file supplemental briefs. Both parties declined. Montana State Fund (State Fund) filed an *amicus curiae* brief on December 22, 2009.<sup>7</sup> The Court heard oral argument on January 12, 2010.

### **Agreed Statement of Facts**<sup>8</sup>

¶ 4 On November 25, 2005, Caldwell suffered an industrial injury arising out of and in the course of his employment with Ravalli County in Ravalli County, Montana. Caldwell

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<sup>1</sup> § 39-71-710(1), MCA.

<sup>2</sup> *Reesor*, 2004 MT 370, 325 Mont. 1, 103 P.3d 1019.

<sup>3</sup> *Reesor*, ¶ 25.

<sup>4</sup> *Satterlee*, 2009 MT 368, ¶ 31, 353 Mont. 265, 222 P.3d 566.

<sup>5</sup> *Satterlee v. Lumberman's Mut. Cas. Co.*, 2005 MTWCC 55.

<sup>6</sup> *Satterlee*, 2005 MTWCC 55.

<sup>7</sup> Amicus Curiae Brief of Montana State Fund, Docket Item No. 29.

<sup>8</sup> Agreed Statement of Facts, Statement of Issue, and Stipulated Briefing Schedule, Docket Item No. 7.

was working as an airport manager and injured his head when he slipped on the ice on the airport taxiway.

¶ 5 At the time of the injury, Caldwell's employer was enrolled under Compensation Plan No. 1 of the Workers' Compensation Act, and its insurer is the Montana Association of Counties Workers' Compensation Trust (MACo).

¶ 6 A dispute exists between the parties. Caldwell was 77 years old and earning more than \$25,000 per year as an airport manager for Ravalli County when he was injured at work. MACo has accepted Caldwell's claim and has paid both medical and wage-loss benefits. Caldwell contends he is entitled to vocational rehabilitation benefits pursuant to § 39-71-1011, MCA. MACo contends that Caldwell is not eligible for vocational rehabilitation benefits pursuant to the provisions of § 39-71-710, MCA.

¶ 7 Caldwell was employed in the United States Army from January 1948, to August 1973. In 1973, when he was 44 years old, he received an honorable discharge and retired from the military where he had been working as E9 Command Sargent Major. From that point forward he has received full military retirement benefits provided for his 25 years of service.

¶ 8 After retiring from the military, Caldwell worked in a variety of occupations including livestock ranching, as a supervisor in resort management, and in mining.

¶ 9 In 1990, at age 62, Caldwell began receiving Social Security retirement benefits. From that point forward, he has received Social Security retirement benefits.

¶ 10 After Caldwell began receiving Social Security retirement benefits, he continued working. Initially, he continued working as a mining supervisor. In September 2002, he began managing the Ravalli County Airport. He continued the full-time job as airport manager until May 2006, about six months after he fell on the taxiway on November 25, 2005.

¶ 11 Caldwell did not reach medical stability for his injury at the airport until February 11, 2008.

¶ 12 On March 5, 2008, Caldwell asked MACo to initiate vocational rehabilitation services. MACo declined to proceed with a rehabilitation review based on the provisions of § 39-71-710, MCA.

¶ 13 Pursuant to § 39-71-1006, MCA, Caldwell would be eligible for rehabilitation benefits if § 39-71-710, MCA, is unconstitutional to the extent that it precludes

rehabilitation benefits based on eligibility for or receipt of Social Security retirement benefits. Caldwell would meet the definition of a disabled worker as provided in § 39-71-1011, MCA.

¶ 14 Section 39-71-710, MCA, termination of benefits upon retirement, provides:

(1) If a claimant is receiving disability or rehabilitation compensation benefits and the claimant receives social security retirement benefits or is eligible to receive or is receiving full social security retirement benefits or retirement benefits from a system that is an alternative to social security retirement, the claimant is considered to be retired. When the claimant is retired, the liability of the insurer is ended for . . . payment of rehabilitation compensation benefits. . . .

## **DISCUSSION**

### **Equal Protection Analysis**

¶ 15 A party challenging the constitutionality of a statute bears the heavy burden of proving the statute unconstitutional beyond a reasonable doubt.<sup>9</sup> A prerequisite to any equal protection challenge is demonstrating that a classification has been adopted that affects two or more similarly situated groups in an unequal way. The first step therefore is to identify the classes involved and then determine if they are similarly situated.<sup>10</sup>

¶ 16 In *Reesor*, the classes at issue were defined as:

- (1) PPD eligible claimants who receive or are eligible to receive social security retirement benefits;
- (2) PPD claimants who do not receive and are not eligible to receive social security retirement benefits.<sup>11</sup>

The Supreme Court held that these classes were similarly situated for purposes of equal protection because “both classes have suffered work-related injuries, are unable to return

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<sup>9</sup> *Powell v. State Compen. Ins. Fund*, 2000 MT 321, ¶ 13, 302 Mont. 518, 15 P.3d 877.

<sup>10</sup> *Bustell v. AIG Claims Service, Inc.*, 2004 MT 362, ¶ 20, 324 Mont. 478, 105 P.3d 286.

<sup>11</sup> *Reesor*, ¶ 10.

to their time of injury jobs, have permanent physical impairment ratings and must rely on § 39-71-703, MCA, as their exclusive remedy under Montana Law.”<sup>12</sup>

¶ 17 In *Satterlee*, the Supreme Court adopted the classification approach set forth in *Reesor* and defined the two classes as:

(1) PTD eligible claimants who receive or are eligible to receive social security retirement benefits;

(2) PTD claimants who do not receive and are not eligible to receive social security retirement benefits.<sup>13</sup>

The Supreme Court applied the same rationale as it did in *Reesor*. The Supreme Court held that the classes were similarly situated because, “the claimant’s age, as defined by the eligibility requirements of receiving SSRI benefits, is the only identifiable differentiating factor between the two classes.”<sup>14</sup>

¶ 18 In this case, the parties agree that the classes are similarly situated.<sup>15</sup> I see no reason to depart from the classes as they were generally defined in both *Reesor* and *Satterlee*. For purposes of the equal protection analysis in this case, the classes are defined as:

(1) Vocational rehabilitation eligible claimants who receive or are eligible to receive social security retirement benefits;

(2) Vocational rehabilitation claimants who do not receive and are not eligible to receive social security retirement benefits.

¶ 19 Having determined the classes at issue are similarly situated, the next step in addressing an equal protection challenge is to determine what level of scrutiny to apply to the legislation being challenged.<sup>16</sup> In both *Reesor* and *Satterlee*, the Supreme Court applied a rational basis level of scrutiny to the equal protection analysis of § 39-71-710,

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<sup>12</sup> *Reesor*, ¶ 12.

<sup>13</sup> *Satterlee*, 2009 MT 368, ¶ 15.

<sup>14</sup> *Satterlee*, 2009 MT 368, ¶ 16.

<sup>15</sup> State Fund does not agree with Caldwell and MACo that the classes are similarly situated.

<sup>16</sup> *Henry v. State Compen. Ins. Fund*, 1999 MT 126, ¶ 29, 294 Mont. 449, 982 P.2d 456.

MCA. The parties agree that rational basis is the appropriate level of scrutiny to apply in this case. I agree.

¶ 20 The final step in the equal protection analysis is to apply the rational basis test to the challenged legislation.<sup>17</sup> “The rational basis test requires that (1) the statute’s objective was legitimate, and (2) that the statute’s objective bears a rational relationship to the classification used by the legislature. Stated another way, the statute must bear a rational relationship to a legitimate governmental interest.”<sup>18</sup>

¶ 21 In *Satterlee*, the Supreme Court affirmed this Court’s determination that the definitions and distinctions regarding PPD and PTD benefits were so significant as to require a different approach than the Supreme Court adopted in *Reesor*.<sup>19</sup> In *Satterlee*, the Supreme Court analyzed § 39-71-710, MCA’s “constitutionality by examining the governmental interests that are relevant to PTD benefits only.”<sup>20</sup> Rehabilitation benefits are a unique benefit entitlement that requires a different approach than the Supreme Court adopted in either *Reesor* or *Satterlee*. However, both *Reesor* and *Satterlee* provide guidance to the rational basis analysis applied in this case.

### **Reesor Rational Basis Analysis**

¶ 22 In *Reesor*, the Montana Supreme Court looked to the public policy set forth at § 39-71-105(1), MCA, in determining whether terminating PPD benefits upon eligibility for social security retirement bore a rational relationship to a legitimate governmental interest. The Supreme Court noted: “As clearly pronounced in § 39-71-105(1), MCA, the primary goal of workers’ compensation benefits is to establish a wage replacement for injured workers, certainly a legitimate and appropriate governmental interest.”<sup>21</sup> The Supreme Court concluded: “[T]he disparate treatment of partially disabled claimants based upon their age, because they are receiving or are eligible to receive social security retirement benefits, is not rationally related to that legitimate governmental interest.”<sup>22</sup> The Supreme Court therefore held that as it related to the termination of PPD benefits, § 39-71-710, MCA,

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<sup>17</sup> *Henry*, ¶ 32.

<sup>18</sup> *Satterlee*, 2009 MT 368, ¶ 18 (citing *Henry*, ¶ 33).

<sup>19</sup> *Satterlee*, 2009 MT 368, ¶ 24.

<sup>20</sup> *Satterlee*, 2009 MT 368, ¶ 24.

<sup>21</sup> *Reesor*, ¶ 18.

<sup>22</sup> *Reesor*, ¶ 19.

violated the Equal Protection Clause found in Article II, Section 4, of the Montana Constitution, and was therefore unconstitutional.<sup>23</sup>

### **Satterlee Rational Basis Analysis**

¶ 23 In *Satterlee*, the Montana Supreme Court began its rational basis analysis by noting that PTD benefits are intended to assist the worker who will never be able to return to work.<sup>24</sup> Citing to *Rausch v. State Compens. Ins. Fund (Rausch II)*,<sup>25</sup> the Supreme Court distinguished the purpose served by PPD benefits from that of PTD benefits:

PPD benefits compensate the worker for sustaining a partial disability by a smaller impairment award, and supplements the wages earned by the claimant upon return to work. PTD benefits do not contemplate a return to work, but, rather, provides a continuous, higher benefit which is paid over the work life of the totally disabled claimant.<sup>26</sup>

¶ 24 Because PPD and PTD benefits served different purposes and employed different entitlement schemes, the Supreme Court did not equate *Reesor* with *Satterlee*. The Supreme Court noted:

Of most relevance to our discussion here is the difference between the timeframes over which PPD and PTD benefits are meant to serve. PPD benefits are temporary and are meant to terminate after a limited number of weeks. PTD benefits however, are meant to assist the worker over the course of his or her work life. *Rausch II*, ¶ 25. This difference is particularly important because it demonstrates the rationality of terminating PTD benefits at “retirement.”<sup>27</sup>

¶ 25 Relying on the public policy set forth at § 39-71-105(1), MCA, the Supreme Court noted that the stated purpose of PTD benefits was to provide wage-loss benefits that bear

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<sup>23</sup> *Reesor*, ¶ 25.

<sup>24</sup> *Satterlee*, 2009 MT 368, ¶ 23.

<sup>25</sup> *Rausch II*, 2005 MT 140, 327 Mont. 272, 114 P.3d 192.

<sup>26</sup> *Satterlee*, 2009 MT 368, ¶ 23. (Quoting, *Rausch II*, ¶ 25.)

<sup>27</sup> *Satterlee*, 2009 MT 368, ¶ 27.

a reasonable relationship to actual wages lost.<sup>28</sup> The Supreme Court concluded that by acting to terminate PTD benefits as it does, § 39-71-710, MCA, rationally advances this governmental purpose.<sup>29</sup> The Supreme Court further considered the public policy set forth at § 39-71-105(1), MCA, which provides that wage-loss benefits should assist the worker at a reasonable cost to the employer.<sup>30</sup> The Supreme Court noted that although cost-containment alone could not be the sole reason for disparate treatment, the consideration of costs in this case was appropriate when coupled with the governmental interest of providing wage-loss benefits that bear a reasonable relationship to actual wages lost.<sup>31</sup> Rejecting the equal protection challenge to § 39-71-710, MCA, as applied to PTD benefits, the Supreme Court held: “[T]he statute is rationally related to the legitimate government interest in assisting the worker at a reasonable cost to the employer so that the wage-loss benefit bear a reasonable relationship to actual wages lost.”<sup>32</sup>

### **Caldwell Rational Basis Analysis**

¶ 26 In both *Reesor* and *Satterlee*, the Supreme Court looked to the public policy set forth at § 39-71-105(1), MCA, to determine the rational basis – or lack thereof – for the termination of PPD and PTD benefits upon eligibility for retirement. Section 39-71-105(1), MCA, applies only to wage-loss benefits. Section 39-71-105(3), MCA, sets forth the correlating public policy for rehabilitation benefits; it provides:

A worker’s removal from the workforce because of a work-related injury or disease has a negative impact on the worker, the worker’s family, the employer, and the general public. Therefore, an objective of the workers’ compensation system is to return a worker to work as soon as possible after the worker has suffered a work-related injury or disease.

¶ 27 Notably, the public policy set forth at § 39-71-105(3), MCA, pays no respect to the worker’s age or retirement eligibility. The statute simply states that a worker’s removal from the workforce because of an injury has a negative impact on the worker, the worker’s family, the employer, and the general public. Terminating the very benefits which mitigate that negative impact flies in the face of this stated legislative objective.

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<sup>28</sup> *Satterlee*, 2009 MT 368, ¶ 27.

<sup>29</sup> *Satterlee*, 2009 MT 368, ¶ 28.

<sup>30</sup> *Satterlee*, 2009 MT 368, ¶¶ 30-31.

<sup>31</sup> *Satterlee*, 2009 MT 368, ¶ 30.

<sup>32</sup> *Satterlee*, 2009 MT 368, ¶ 31.



¶ 28 As noted above, in determining that PPD and PTD benefits served different purposes and employed different entitlement schemes, of most relevance to the Supreme Court's discussion was the time frames over which the respective benefits were meant to serve. Specifically, the Supreme Court noted that PPD benefits terminated after a limited number of weeks whereas PTD benefits were meant to assist the worker over the course of his or her work life. The Supreme Court found this significant in finding a rational basis for terminating PTD benefits at "retirement," as the statute defined it.<sup>33</sup> Recognizing that PPD benefits terminated after a statutorily defined number of weeks, the Supreme Court concluded that § 39-71-710, MCA, was irrational as applied to PPD benefits because it disparately impacted similarly situated classes without serving any legitimate government interest.<sup>34</sup>

¶ 29 As with PPD benefits, rehabilitation benefits terminate after a statutorily defined number of weeks.<sup>35</sup> Furthermore, rehabilitation benefits are meant to assist **only** workers who will return to work. Before an injured worker can qualify for rehabilitation benefits, § 39-71-1006, MCA, requires that a rehabilitation provider certify that the worker has reasonable vocational goals and a reasonable reemployment opportunity. The rehabilitation plan must take into consideration a worker's **age**, education, training, work history, residual physical capacities, and vocational interests. Since the rehabilitation statute already considers the worker's age in determining eligibility for rehabilitation benefits, I see no rational basis for automatically terminating rehabilitation benefits upon an injured worker's eligibility for retirement. Indeed, automatically terminating rehabilitation benefits without even considering whether the worker has reasonable vocational goals and reasonable reemployment opportunity, as required by § 39-71-1006, MCA, subverts the governmental objective of the workers' compensation system, set forth at § 39-71-105(3), MCA, to return a worker to work as soon as possible after the worker has suffered a work-related injury or disease. As noted above, this governmental objective does not consider the injured worker's age. Therefore, I conclude that as it relates to rehabilitation benefits, § 39-71-710, MCA, does not bear a rational relationship to a legitimate governmental interest and violates Caldwell's right to equal protection as guaranteed by Article II, Section 4, of the Montana Constitution.

## ORDER

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<sup>33</sup> *Satterlee*, 2009 MT 368, ¶ 27.

<sup>34</sup> *Satterlee*, 2009 MT 368, ¶ 28.

<sup>35</sup> § 39-71-1006(2), MCA.

¶ 30 Section 39-71-710, MCA, as it relates to rehabilitation benefits, violates the Equal Protection Clause found in Article II, Section 4, of the Montana Constitution and is therefore **unconstitutional**.

DATED in Helena, Montana, this 7<sup>th</sup> day of July, 2010.

(SEAL)

/s/ JAMES JEREMIAH SHEA

JUDGE

c: Rex Palmer  
Norman H. Grosfield  
Bradley J. Luck  
Thomas J. Martello  
Submitted: January 12, 2010